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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,838	10/22/2003	Volker Dieckmann	000137.00030	4246

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EXAMINER

MITCHELL, KATHERINE W

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 11/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/689,838

Applicant(s)

DIECKMANN, VOLKER

Examiner

Katherine W Mitchell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on _____ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Specification

The abstract of the disclosure is objected to because of the use of the implied phrase "The invention relates to" and the use of legal terminology "said" in lines 6 and

12. Correction is required. See MPEP § 608.01(b).

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Priority

Acknowledgment is made of applicant's disclosure of DE 10226119, filed more than 1 year prior to this application. Applicant correctly did not make a claim for priority, as a claim for priority under 35 U.S.C. 119(a)-(d) cannot be based on said application, since the United States application was filed more than twelve months thereafter. **Claim**

Objections

1. Claim 8 is objected to because of the following informalities: claim 8 discloses "support lobes having a length...". Since the support lobes do not meet to form a unitary structure, examiner is assuming "a length" means the length of each lobe. Appropriate correction is required.

Claim Rejections - 35 USC § 102

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2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 3-4 and 7-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Burke USP 2430555. Burke teaches a clamping piece (Fig 5) of springy sheet metal (col 1 lines 9-15) comprising 2 opposing arms (2, beginning just above recess 3 and ending to include 1) each arm having a v-shaped latching recess (Fig 5, at 3) functionable as described, an arched shaped spring bottom connecting said opposing arms (top portion of Fig 5 or 3, surrounding aperture "5" in Fig 3), said spring bottom having a hole (aperture 5) in its middle for a screw, and at least one supporting part (6,6) capable of positioning between spring bottom and mounted component capable of holding the spring bottom a minimum distance from the component when pressure is applied on the spring bottom.

Further Re claim 3: said at least one supporting part (6,6 in Fig 3 and 5) comprising a portion of one of said arms that extends at an angle to the respective one of the latching recesses towards spring bottom.

Further Re claim 4: said at least one supporting part includes a tubular rail drawn out of the spring bottom and wherein the walls are curved from said recess to said arched bottom. A prong is considered a rail:

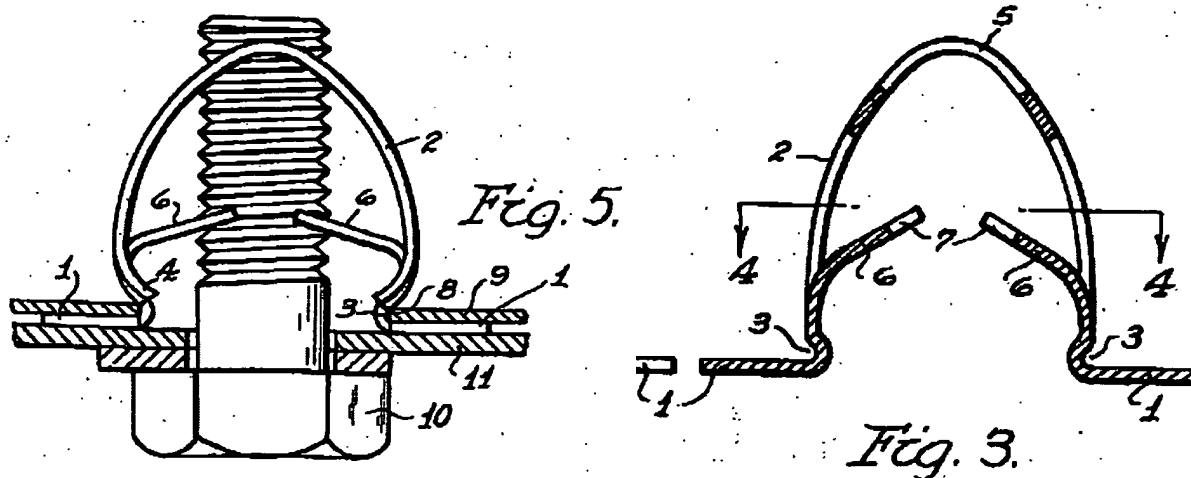
rail (râl) *noun*

1.a. A bar extending horizontally between supports, as in a fence. b. A structure made of such bars and supports and forming a barrier or guard; a railing.

prong (prông, prông) *noun*

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1. A thin, pointed, projecting part: a *pitchfork with four prongs*. 2. A branch; a fork: *the two prongs of a river*.¹



Further Re claims 7-8: Burke teaches that the support lobes (6) have a length along the spring bottom shorter than a distance between said latching recesses (Fig 5, left 6 will not meet right 6, thus the length is shorter than the aperture between recesses.

4. Claims 3-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Munse USP 3192823. Munse teaches a clamping piece (Fig 1,2 and 4) of springy sheet metal (col 1 lines 56-57) comprising 2 opposing arms, each arm having a v-shaped latching recess functionable as described, an arched shaped spring bottom connecting said opposing arms, said spring bottom having a hole in its middle for a screw, and at least one supporting part (18) capable of positioning between spring bottom and mounted component capable of holding the spring bottom a minimum distance from the

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component when pressure is applied on the spring bottom. The structure is clearly shown in the figures.

Further Re claim 3: said at least one supporting part (18) comprising a portion of one of said arms that extends at an angle to the respective one of the latching recesses towards spring bottom.

Further Re claim 4: said at least one supporting part includes a tubular rail drawn out of the spring bottom and wherein the walls are curved from said recess to said arched bottom. A detent is considered a rail.

5. Claims 3-4 and 7-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Meyer USP 3869760. Meyer teaches a clamping piece (Fig 1,2 and 3) of springy sheet metal col 2 lines 25-29) comprising 2 opposing arms, each arm having a v-shaped latching recess functionable as described, an arched shaped spring bottom connecting said opposing arms, said spring bottom having a hole in its middle for a screw, and at least one supporting part (26) capable of positioning between spring bottom and mounted component capable of holding the spring bottom a minimum distance from the component when pressure is applied on the spring bottom. The structure is clearly shown in the figures.

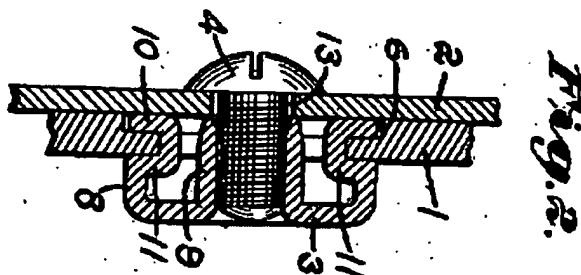
Further Re claim 3: said at least one supporting part (26) comprising a portion of one of said arms that extends at an angle to the respective one of the latching recesses towards spring bottom.

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Further Re claim 4: said at least one supporting part includes a tubular rail drawn out of the spring bottom and wherein the walls are curved from said recess to said arched bottom. A detent is considered a rail.

Further Re claims 7-8: Meyer teaches that the support lobes (26) have a length along the spring bottom shorter than a distance between said latching recesses (Fig 3, left 26 will not meet right 26, thus the length is shorter than the aperture between recesses.

6. Claim 6 is rejected under 35 U.S.C. 102(b) as being anticipated by Pierce USP 1822845 or Zimmer USP 5281064. Pierce teaches a clamping piece (Fig 2) of springy sheet metal (col 1 lines 27-50) comprising 2 opposing arms (10) each arm having a v-shaped latching recess (Fig 2, shown between "10" and "11") functionable as described, an arched shaped spring bottom connecting said opposing arms (top portion of Fig 2, surrounding aperture in Fig 2), said spring bottom having a hole (Fig 2, thru nut extension 9) in its middle for a screw, and at least one supporting part (9) capable of positioning between spring bottom and mounted component capable of holding the spring bottom a minimum distance from the component when pressure is applied on the spring bottom, said at least one supporting part (9) comprising a metal tubular member (pressed from single



8. Claims 3 and 7-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Dubost EP 0423021. Dubost teaches a clamping piece (cage 1 Fig 1) of springy sheet metal comprising 2 opposing arms (10) each arm having a v-shaped latching recess (Fig 1) functionable as described, an arched shaped spring bottom connecting said opposing arms (top portion of Fig 1 or 2, from just below the v-shaped recess on the right to just below the v-shaped recess on the left), said spring bottom having a hole (aperture 13) in its middle for a screw, and at least one supporting part (12, Fig 1 or 4, Fig 4 or 5) capable of positioning between spring bottom and mounted component capable of holding the spring bottom a minimum distance from the component when pressure is applied on the spring bottom.

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Further Re claim 3: said at least one supporting part (12, Fig 1) comprising a portion of one of said arms that extends at an angle to the respective one of the latching recesses towards spring bottom.

Further Re claims 7-8: the support lobes (12) have a length along the spring bottom shorter than a distance between said latching recesses (Fig 1, left 12 will not meet right 12, thus the length is shorter than the aperture between recesses).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pierce USP 1822845 or Zimmer USP 5281064. Pierce teaches a clamping piece (Fig 2) of springy sheet metal (col 1 lines 27-50) comprising 2 opposing arms (10) each arm having a v-shaped latching recess (Fig 2, shown between "10" and "11") functionable as described, an arched shaped spring bottom connecting said opposing arms (top portion of Fig 2, surrounding aperture in Fig 2), said spring bottom having a hole (Fig 2, thru nut extension 9) in its middle for a screw, and at least one supporting part (9) capable of positioning between spring bottom and mounted component capable of holding the spring bottom a minimum distance from the component when pressure is applied on the spring bottom, said at least one supporting part (9) comprising a tubular member positioned within the hole portion in the spring bottom. (see Fig 2 regarding claim 6

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above). Zimmer teaches a clamping piece (Fig 7) with arms forming v-shaped recess (60,62), an arched springy bottom (50-54-52), and a hole (see use in Fig 5 for hole), and at least one supporting part (48) capable of positioning between spring bottom and mounted component capable of holding the spring bottom a minimum distance from the component when pressure is applied on the spring bottom, said at least one supporting part (48) comprising a tubular member positioned within the hole portion in the spring bottom.

However, neither Zimmer nor Pierce teaches that the member is plastic.

Examiner notes that applicant provides no criticality for the material, and claims both metal and plastic variants. A species restriction was not given, as they are considered obvious variants, per *In re Leshin*, 125 USPQ 416 below.

Examiner takes Official Notice that plastic is well known in the art as a material for fastener parts, as it is strong, inexpensive, easily formable and moldable, lightweight, and corrosion resistant. It would have been considered obvious to one of ordinary skill in the art, at the time the invention was made, to have used plastic for the support, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

11. Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Munse. As discussed above, Munse teaches that the support lobes (18) have a length along the spring bottom shorter than a distance between said latching recesses (Fig 5, left 6 will not meet right 6, thus the length is shorter than the aperture between

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recesses. However, Munse teaches only one support lobe. It would have been considered obvious to one of ordinary skill in the art, at the time the invention was made, to have multiple support lobes if the fastener has arms of equal length, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Response to Arguments

12. Applicant's arguments with respect to claims 3-7 have been considered but are moot in view of the new ground(s) of rejection.

13. Applicant has noted that Pierce, applied to original claims 1 and 4, would not read on amended claim 4 and new claim 8. Note that Pierce is not being applied against claims 4 and 8.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katherine W Mitchell whose telephone number is 703-305-6713. The examiner can normally be reached on Mon - Thurs 10 AM - 8 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Katherine W Mitchell
Patent Examiner
Art Unit 3677

Kwm
11/2/2004



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